Remember one main rule when called to testify: Be prepared

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Few people look forward to a court appearance. Most health care personnel will never have to make one, but some, such as emergency department staff [see sidebar] and forensic pathologists, make frequent visits to courtrooms. Doctors and nurses most commonly testify at county and provincial court sessions and inquests, but regardless of venue they must always be aware of possible pitfalls.

Particular care must be taken at an inquest because it is a public hearing called to ascertain the facts about a death in the community. Although coroners take great care to inform all present that "no one is on trial", anyone with a "substantial and direct interest in a death" can be given the right to cross-examine witnesses. This will usually be done by a lawyer acting on the person's behalf.

Since the lawyer will not be bound by the same rules of interrogation that apply in a courtroom, the inquest can become a fishing ground or a minefield that may affect future civil or malpractice actions. More information is available in two Ontario government publications — *Being a Witness* was published by the Ministry of the Attorney General in May 1983 and the *Revised Inquest Manual*, produced by the Ministry of the Solicitor General, appeared in 1976.

Much of the advice that follows has been published elsewhere, but we are particularly indebted to Professor Bernard Knight (*BMJ* 1978; 2: 1414-1415) and Professor J.E. Tracy (*The Doctor as Witness*, W.B. Saunders Company, 1957).

For your court appearance, dress as you would for a funeral — not to draw attention to yourself. Your testimony should be delivered in a louder-than-normal voice to make it easier to record your comments. Respond confidently when questioned, but without appearing condescending or arrogant. When providing a "Yes" or "No" answer add "Sir" or "Madam" to the response, both as a sign of respect and to help the court recorder know when the response is complete. Leave humour and sarcasm outside — neither has any place in court or at an inquest.

Always bring a brief job description. Although everyone will have a general idea of what doctors and nurses do, they may not be familiar with the functions of internists, pathologists or executive-assistant nursing supervisors. A pathologist might provide this description: "I investigate the mechanisms and causes of disease and death. This investigation includes the examination of body fluids and tissues and the performance of post mortems." Such preparation will prevent any fumbling for an explanation, something that can create confusion and uncertainty and affect your credibility.

You may be asked to list your qualifications in order to establish why you are considered an expert witness. Avoid long-winded responses by saying something like this: "I have been a pathologist since 1961 and I hold the appointment of regional pathologist to the attorney general."

While defence counsel may simply move to have you accepted as an expert witness because it does not want a jury to hear your list of qualifications, the Crown attorney may insist upon telling the jury why you are a prize witness. Let the lawyers play their games — remain quiet, alert and dignified.

Once your field of expertise is established, stay within its boundaries. For instance, pathologists should not provide opinions about clinical treatment and medical technologists should not comment on the clinical effects of high blood-alcohol levels. Do not appear unhelpful; simply state that you are not an expert in matters outside your field. The lawyer may be attempting to elicit ill-considered opinions that he will later prove to be unsound. If you do not know an answer or should not be expected to know it, say so.

Do not be surprised when attempts are made to discredit your evidence. A lawyer may question your qualifications — you have been head nurse in the cardiac-care unit for only 3 months, or you have seen only 2 cases of Guillain-Barré syndrome during your medical career. Never become angry or rude because of such tactics — that would delight the lawyer because it would create doubts about your professional judgement. Wait for the coroner or judge to come to

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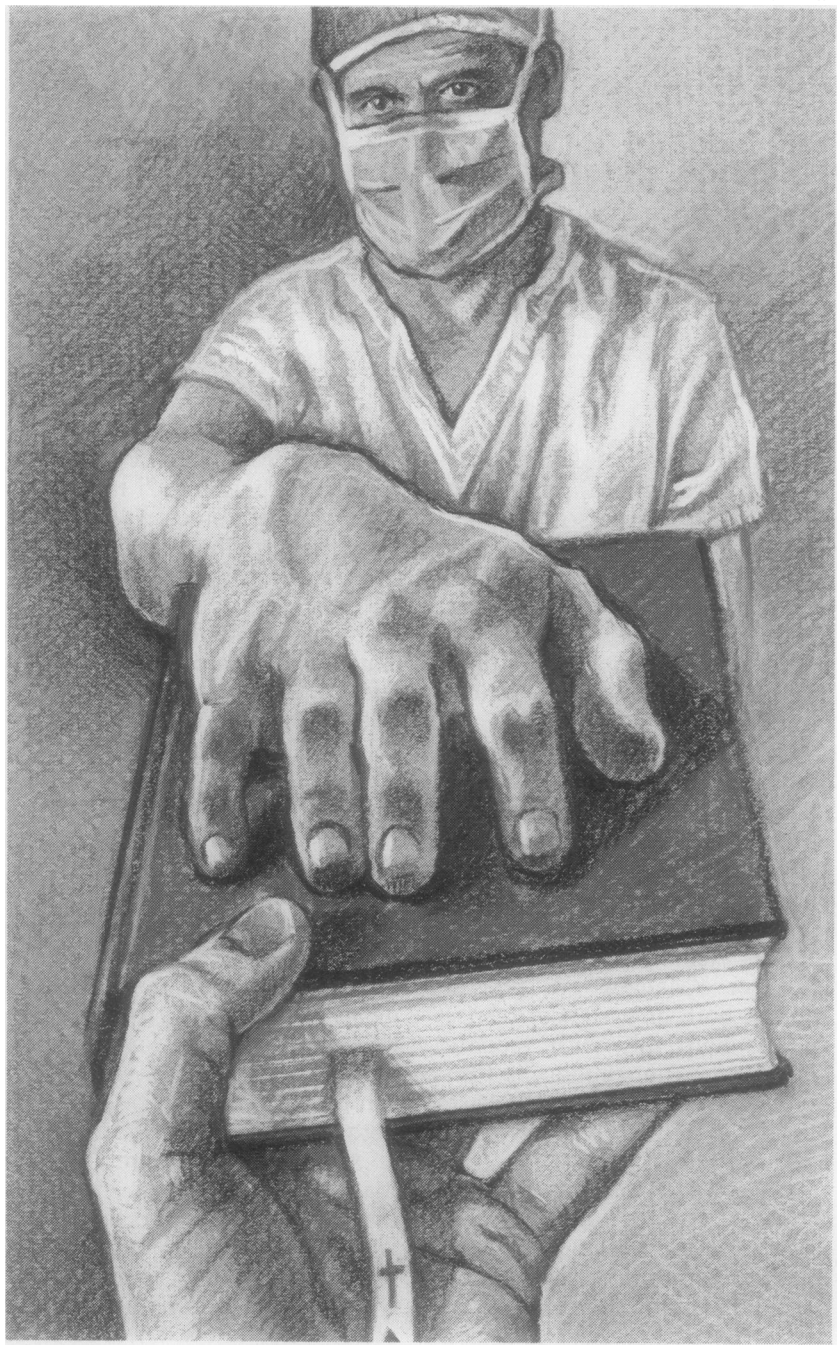

your rescue; he invariably does.

The person who is questioning you may produce articles or textbooks that appear to support an opinion different from yours. If you are not familiar with the text say so, but if you recognize it ask which edition is being quoted. Counsel may not have the latest edition.

You can point out that the published work counsel is referring to is not considered authoritative, or you can observe that later work has led to different opinions. In general, judges and coroners do not like to spend time wrangling over references. However, it is mandatory to study your references and to be prepared to offer them.

How do you prepare for a court appearance? You will have to refer to the original statement you gave to the coroner, Crown attorney or police months, even years, ago. That statement contains the facts as you perceived them and your opinion about those facts: the cause of death or injury, the time a drug was administered, the amount of alcohol in the blood, or the physical signs present in a patient. You will have to defend this written statement in court, so it should never contain opinions that you are not willing to stand behind. In court you must define clearly what you have written and have references available to support your conclusions. You can, of course, change your opinion in light of new evidence. If your findings were equivocal, be prepared to offer various interpretations of them at the outset — do not wait until half the evidence has been presented.

Never take sides when called to give testimony. You are in court to help the jury reach a decision, not to help the police or anyone else. Answer the questions asked of you, not the ones you feel should have been asked.

It is unprofessional and unseemly to criticize other members of the health care team in court. In one recent Ontario inquest, which received wide newspaper coverage, a nurse made this comment about a physician's actions: "I was appalled."

That type of comment is out of place for a number of reasons. For one, an inquest is held to establish the deceased person's identity and to determine the cause of death, not to apportion blame for that death. As well, harsh and critical comments made on the witness stand may poison professional relationships in a hospital. In the instance cited, it should also be noted that the nurse was probably stepping outside her area of expertise.

Your testimony should be prepared in detail — you should have a script and stick to it. Remember this: newspaper reporters are often present at inquests and trials and things said in court today may be headlines tomorrow. Consider this recent one: " 'Worker's skull fractured like a walnut in a nutcracker,' says pathologist". That was simply an overly graphic attempt to describe a crushing injury. Similarly, pathologists should never describe an autopsy as "routine" — no death is routine to the family involved — and children

should be called that, never "kids".

Because you have prepared a script for your court appearance, you should rehearse and attempt to anticipate lines of questioning. Try to avoid jargon in your responses, and if technical terms are being used, be prepared to define them. For instance, terms such as contusion, laceration and lesion are in wide use. How would you define each one for a lay audience? Technologists should bring their technical manuals to the courtroom and they should be prepared to explain the principles of tests.

If a patient's chart is 15 cm thick, the physician should prepare both a summary and an index. You should know relevant details without having to look them up, although the chart can be consulted to refresh your memory.

Although it is wise to consult the Crown attorney or coroner before an appearance, it is surprising how rarely this is done. The consultation is not to provide coaching, but to construct a plan for presenting evidence in an orderly manner.

If defence counsel asks if you discussed evidence with the Crown attorney and demands, "What did he tell you to say?", simply respond: "He told me to tell the truth and that I would have nothing to fear during cross-examination." If you have never testified before, consult someone who has. Try your local coroner or forensic pathologist.

What is our final piece of advice? Simply remember that it is never easy to present evidence and even those who give testimony frequently find the procedure stressful. Preparation is all important. Prepare your script, rehearse it, be professional and be polite. And always remember this: You are not the only anxious person in the courtroom or at the inquest.■

Many are called but few are subpoenaed

Brian Goldman, MD

What with criminal cases, coroner's inquests and police and college tribunal hearings I probably give testimony as often as I see patients with head injuries, even though I know much more about such injuries than about the law. However, I did learn a lot about the relationship between doctors and lawyers during a recent encounter with our judicial system.

In the fall of 1987 the assistant of a well-known Toronto criminal lawyer informed me that I would have to appear for the defence in the case of a man charged with assault. The man had been treated in my Emergency Department while I was on duty, but his name was not familiar to me because an intern had treated him. This would prove to be an important detail.

The assistant seemed anxious to serve me with a subpoena, although I had given testimony on other occasions without receiving a summons. I do shift work, so it took half a dozen phone calls before I finally received an order to appear in court at 9 a.m. for the start of the trial.

I phoned the lawyer's office, hoping to persuade the assistant to be more specific about the time my testimony would be required. She said I was not actually required to be in court until 10 a.m., which left me wondering why I had been given an earlier time.

Since it would take only 15 minutes to reach the courtroom, I promised to wait by my phone and she promised to call when I was needed. I hung up feeling assured, but that feeling did not last long.

I kept my faithful vigil by the phone. The lawyer's assistant called at 9:40 a.m. and told me I was needed immediately. I rushed to the court and was in time to join an orthopedic surgeon who had also been subpoenaed. We were both greeted enthusiastically by the defence counsel before he breezed into the courtroom.

In about the time it takes to walk through a revolving door, he breezed back. "Sorry", he said. "It's been postponed."

We had a brief discussion and he learned for the first time that it was my intern, not I, who had treated his client. The conversation that followed between lawyer and assistant can best be described as a fairly faithful rendering of the old "Who's on first?" routine. "Looks like we got the wrong doctor", he finally concluded. I was not amused.

Although I was angry, I had not been put out a great deal. The orthopedic surgeon, however, had been forced to cancel a full morning of elective surgery to attend the courtroom comedy. A woman scheduled for a total hip replacement was forced to wait another week for surgery.

I did gain something from the experience, though. I learned that it is time to set some ground rules for our relationship with the legal profession. If you are wondering, the case was postponed again in January.

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